IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 1530 OF 1985

M/s.Mafatlal Engineering Industries) .. Plaintiffs.
Limited through its official)
Liquidator having his office at)
Bank of India Bldg.,5th floor,)
M.G.Road, Fort, Mumbai-400 023.)

V/s.

Kiran Tukaram Sawant of Bombay,) .. Defendant.
Indian Inhabitant r/at. 21/5,)
Shivashawti, L.B.Shastri Marg,)
at and Post Kulgaon, Badlapur-)
Station, Dist.Thane.)

Mr.Devasis Mitra for official Liquidator for the Plaintiffs.

None for the Defendant.

CORAM : S. A. BOBDE, J.

DATED : 19th JANUARY, 2007.

ORAL JUDGMENT :

. The plaintiffs have sued the defendant by way of this summary suit for a decree in the sum of Rs. 75,190/- as per the particulars of the claim with interest at the rate of 18% per annum from the date of filing the suit till judgment.

2. In the suit the plaintiffs have stated that the defendant was employed by the original plaintiffs i.e.

Mafatlal Engineering Industries Ltd., as Engineer in the junior officer cadre by an agreement dated 01.02.1981. In pursuance of that agreement, the original plaintiffs paid a sum of Rs.73,000/- to the defendant for specialised training in abroad in West Germany. The defendant went through the training on 19th September, 1983 to 10th December, 1983. On return, he resumed work and was posted as senior engineer. He resigned w.e.f. 27.11.1984. The original plaintiffs did not accept the resignation of the defendant but asked him to pay a sum of Rs.73,000/- as per the agreement dated 19.07.1983 under which he was sent for training. Since the defendant failed to discharge his liability, the plaintiffs have filed the present suit.

3. The learned single Judge of this court passed an order dated 18.11.1985, granting leave to the defendant to defend upon the condition of depositing a sum of Rs.25,000/- within a period of twelve weeks. The matter was to be transferred to the list of commercial causes upon deposit by the defendant. The defendant was permitted to file a written statement or points of defence six weeks thereafter. An affidavit of document/ list of document were to be filed within six weeks thereafter.

4. It appears from the report of the Prothonotary and Sr.Master dated 19th January, 2006 that the defendant deposited a sum of Rs.5,000/- only in pursuance of the order dated 11th February, 1986 and a sum of Rs. 5,000/- only in pursuance of the order dated 20th February, 1986 in Appeal No. 26 of 1986. Thus the deposit was obviously not in accordance with the order passed on 18.11.1985, granting conditional leave to defend.

5. Order 37 Rule 3, sub-rule 6 reads as follows:

Sub-rule (6) At the hearing of such summons for judgment,--

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or

> Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

6. It is obvious that since the defendant has failed to deposit the amount of Rs.25,000/-; the plaintiffs are entitled to a judgment forthwith. More-over, it appears that even otherwise the defendant has not filed a written statement and the court, therefore, entitled to pronounce a judgment against him.

7. In view of the above and having regard to the uncontroverted case of the plaintiffs, i.e. the official liquidator, who succeeded the original plaintiffs, it is appropriate in the interest of justice to decree the suit of the plaintiffs, which is hereby decreed in the sum of Rs.75,190/- with interest at the rate of 12% per annum.

8. Decree be drawn accordingly. There shall be no order as to costs.

(S.A.BOBDE,J.)

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